

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: April 5, 2021**

<u>CASE NUMBER</u>	6364
<u>APPLICANT NAME</u>	Henry Hamilton
<u>LOCATION</u>	2339 Dauphin Island Parkway (North side of Dauphin Island Parkway, 118'± West of Rosedale Road)
<u>VARIANCE REQUEST</u>	USE VARIANCE: Use Variance to allow automobile sales and service in an R-1, Single-Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE VARIANCE: The Zoning Ordinance does not allow automobile sales and service in an R-1, Single-Family Residential District.
<u>ZONING</u>	R-1, Single-Family Residential District
<u>AREA OF PROPERTY</u>	12,525 Square Feet / 0.29± Acres
<u>CITY COUNCIL DISTRICT</u>	District 3
<u>ENGINEERING COMMENTS</u>	No comment.
<u>TRAFFIC ENGINEERING COMMENTS</u>	If the use is permitted, consider requiring the installation of something vertical (i.e. short posts with chain, curb stops, etc.) to prevent the use of the front landscape area as a sales area to prevent possible line of sight issues and right-of-way encroachments in the future.
<u>URBAN FORESTRY COMMENTS</u>	Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 2015-116 and City Code Chapters 57 and 64). Private removal of trees in the right-of-way will require approval of the Mobile Tree Commission. Removal of heritage trees from a commercial site will require a tree removal permit.

FIRE
COMMENTS

All projects within the City Limits of Mobile shall comply with the requirements of the City of Mobile Fire Code Ordinance (2012 International Fire Code). Fire apparatus access is required to be within 150' of all commercial and residential buildings. A fire hydrant is required to be within 400' of non-sprinkled commercial buildings and 600' of sprinkled commercial buildings.

ANALYSIS

The applicant is requesting a Use Variance to allow automobile sales and service in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow automobile sales and service in an R-1, Single-Family Residential District.

The site has been given a Mixed Commercial Corridor (MCC) land use designation, per the Future Land Use Plan and Map, adopted on May 18, 2017 by the Planning Commission. The Future Land Use Plan and Map complements and provides additional detail to the Development Framework Maps in the Map for Mobile, adopted by the Planning Commission at its November 5, 2015 meeting.

This land use designation mostly applies to transportation corridors west of I-65 serving primarily the low-density (suburban) residential neighborhoods. MCC includes a wide variety of retail, services and entertainment uses.

This designation acknowledges existing commercial development that is spread along Mobile's transportation corridors in a conventional strip pattern or concentrated into shorter segments of a corridor.

Over time, new development and redevelopment in Mixed Commercial Corridors is encouraged to raise design quality, improve connectivity to surrounding neighborhoods; improved streetscapes; and improve mobility and accessibility for all users of the corridor.

It should be noted that the Future Land Use Plan and Map components of the Map for Mobile Plan are meant to serve as a general guide, not a detailed lot and district plan. In many cases the designation on the new Future Land Use Map may match the existing use of land, but in others the designated land use may differ from what is on the ground today. As such, the Future Land Use Plan and Map allows the Planning Commission and City Council to consider individual cases based on additional information such as the classification request, the surrounding development, the timing of the request, and the appropriateness and compatibility of the proposed use and, where applicable, the zoning classification.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant states the following:

With your approval we are planning to open an Auto Sales & Repair Shop at this location. About four years ago with the help of Mrs. York we opened our first location. This location is doing well. We have improved the community and created jobs. Our goals are to do the same at 2339 Dauphin Island Pkwy. We are a small business trying to make a big impact for the continued growth of our community and city. Our experience in this field expands over a period of 30 years.

As stated, the applicant is requesting a Use Variance to allow automobile sales and service in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow automobile sales and service in an R-1, Single-Family Residential District.

According to staff research a dry-cleaning business has operated on site since at least 1980. The site was developed between 1960 and 1975, according to aerial photos. As such, transitioning to automobile sales and repair would constitute a change in use and require improvements to the subject site to comply with the specific use requirements. Furthermore, updates to the structure may be required by Building Codes. Additionally, as the underlying zoning would remain R-1 the servicing of any vehicles is required to occur entirely within an enclosed structure, necessitating further renovations as the existing structure does not contain a garage. It should also be noted that the property does not appear to contain enough area for the parking of vehicles for sale unless the applicant intends to park on the adjacent property to the East. Doing so would require a Planned Unit Development to allow for cross access and parking.

The site was part of a 1956 annexation into the City. The 1966 zoning map (prior zoning ordinance) and the 1967 zoning map (current zoning ordinance) each depict the site with R-1, Single-Family Residential zoning. As previously noted, aerial photos indicate that the property was developed between 1960 and 1975, thus while under a zoning ordinance. Staff cannot determine if a previous use variance was granted to allow the commercial development and use of the property. However, as the property has been in commercial use since at least 1975, a request to rezone the subject site may be more appropriate than a use variance.

The applicant has not provided any justification as to why the requested variances are necessary. Furthermore, rezoning the subject site may be more appropriate for the proposed development. Alternatively, the applicant could find an appropriately zoned location that would allow auto sales without the need for variances. It is simply the applicant's desire to use the subject site for auto sales that variances are necessary, resulting in a self-imposed hardship. As such, Staff is recommending Denial to the Board of the requested variances.

RECOMMENDATION:

Staff recommends to the Board the following findings of fact for Denial:

- 1) Granting the variance will be contrary to the public interest because it will be contrary to the Zoning Ordinance requirements regarding the prohibition of auto sales in a R-1, Residential Single-Family District, and commercial site development standards;
- 2) Special conditions and hardships do not exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and
- 3) The spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance because the proposed use could be established in the appropriate zoning district without the necessity of a variance.

Revised for the April 5, 2021 meeting:

The Board of Adjustment heldover the application until the April 5th meeting, so that the applicant could submit a rezoning request to the Planning Commission. The applicant has submitted a request to rezone the property from R-1, Single-Family Residential to B-3, Community Business District, which will be heard by the Planning Commission at its April 15th meeting. As such, staff recommends the Board holdover the Use Variance request until such time that a determination is made regarding the pending rezoning request.

*Staff recommends the Board **holdover** the Use Variance request to the May 3rd meeting to allow the Planning Commission to consider the rezoning application.*

Revised for the May 3, 2021 meeting:

The Board of Adjustment heldover the application until the May 3rd meeting, so that the applicant's rezoning application could be heard by the Planning Commission at its April 15th meeting.

*After discussion, the Planning Commission voted to recommend to the City Council that the property be rezoned to **B-2, Neighborhood Business District**. The applicant wishes to operate auto sales and service, which requires a minimum of a **B-3** zoning district, therefore based on the Planning Commission decision, a variance is still needed for the applicant to operate the proposed business at the subject location.*

While the Planning Commission did not vote to rezone the property in such a way that the applicant can use it for car sales and service, there is no hardship specific to the property so that it cannot be utilized for a compliant B-2 use. It is simply the applicant's desire to operate a business at a location that is not properly zoned for such.

RECOMMENDATION

Staff recommends to the Board the following findings of fact for Denial:

- 1) Granting the variance will be contrary to the public interest because it will be contrary to the Zoning Ordinance requirements regarding the prohibition of auto sales in a R-1, Residential Single-Family District (or B-2, Neighborhood Business District), and commercial site development standards;*
- 2) Special conditions and hardships do not exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and*
- 3) The spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance because the proposed use could be established in the appropriate zoning district without the necessity of a variance.*

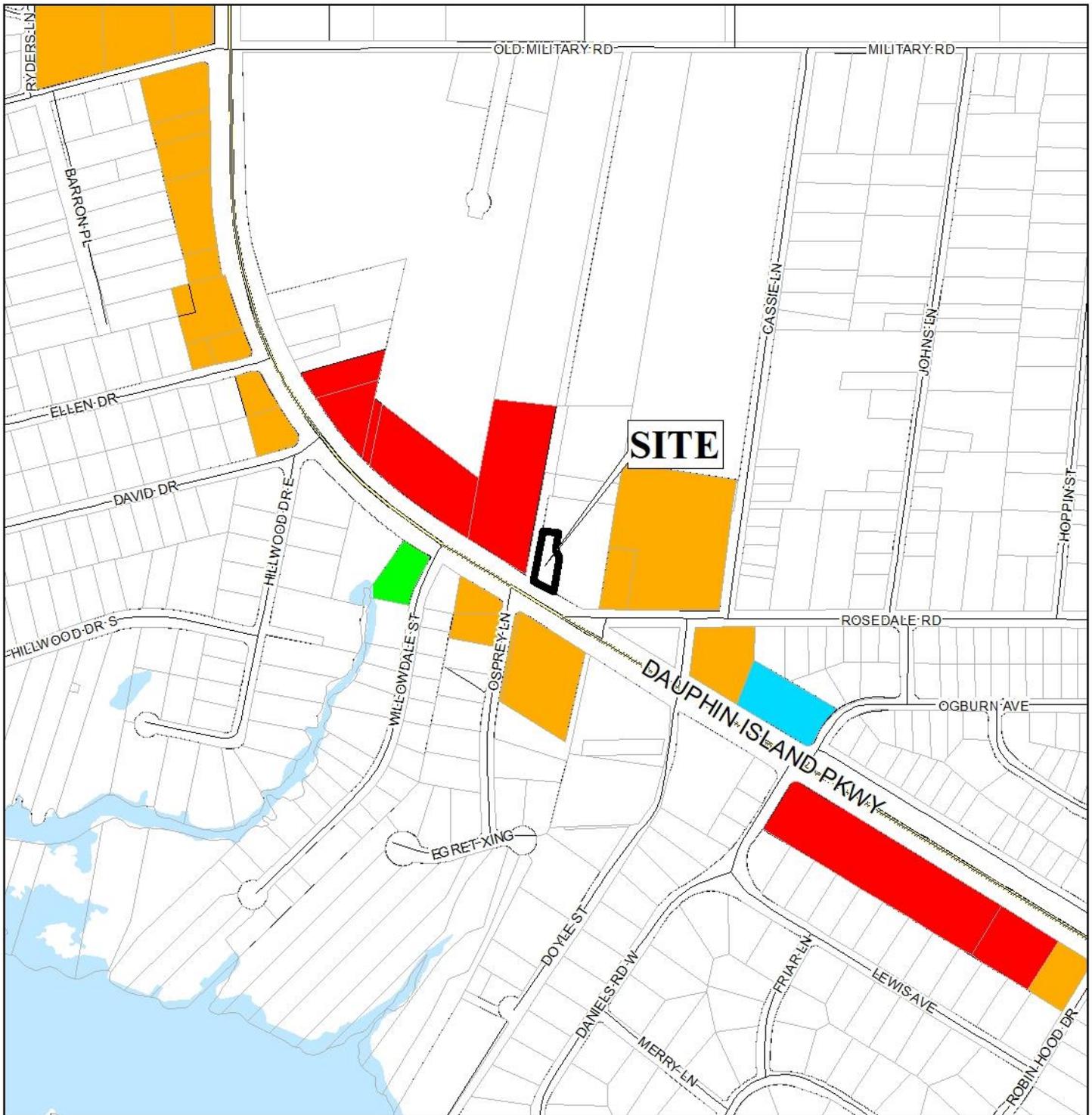
LOCATOR MAP



APPLICATION NUMBER 6364 DATE May 3, 2021
APPLICANT Henry Hamilton
REQUEST Use Variance



LOCATOR ZONING MAP



APPLICATION NUMBER 6364 DATE May 3, 2021

APPLICANT Henry Hamilton

REQUEST Use Variance



NTS

FLUM LOCATOR MAP



APPLICATION NUMBER 6364 DATE May 3, 2021

APPLICANT Henry Hamilton

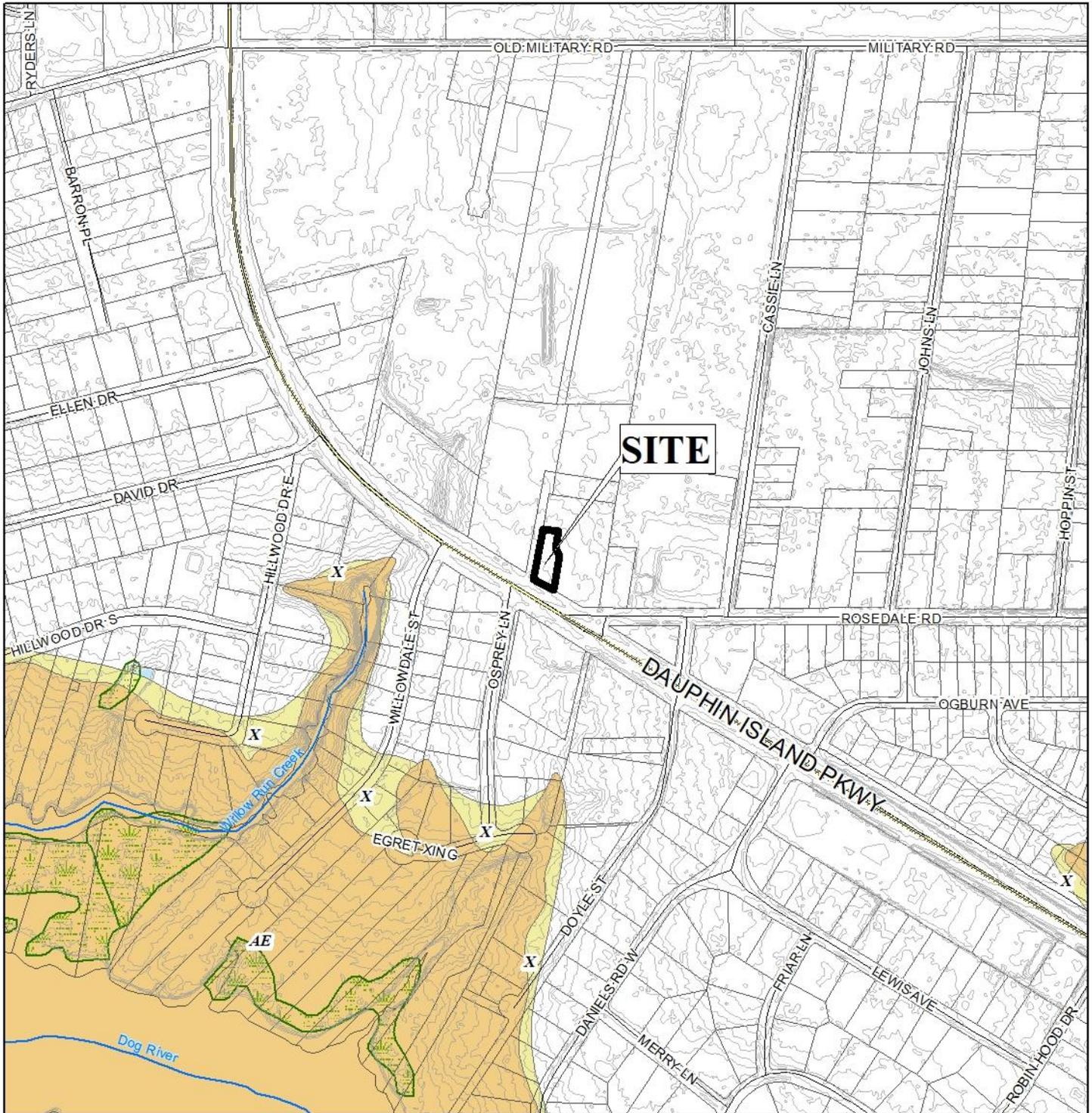
REQUEST Use Variance

- | | | | |
|---------------------------|-----------------------------------|---------------------|--------------------|
| Low Density Residential | Neighborhood Center - Traditional | Downtown Waterfront | Parks & Open Space |
| Mixed Density Residential | Neighborhood Center - Suburban | Light Industry | Water Dependent |
| Downtown | Traditional Corridor | Heavy Industry | |
| District Center | Mixed Commercial Corridor | Institutional | |



NTS

ENVIRONMENTAL LOCATOR MAP



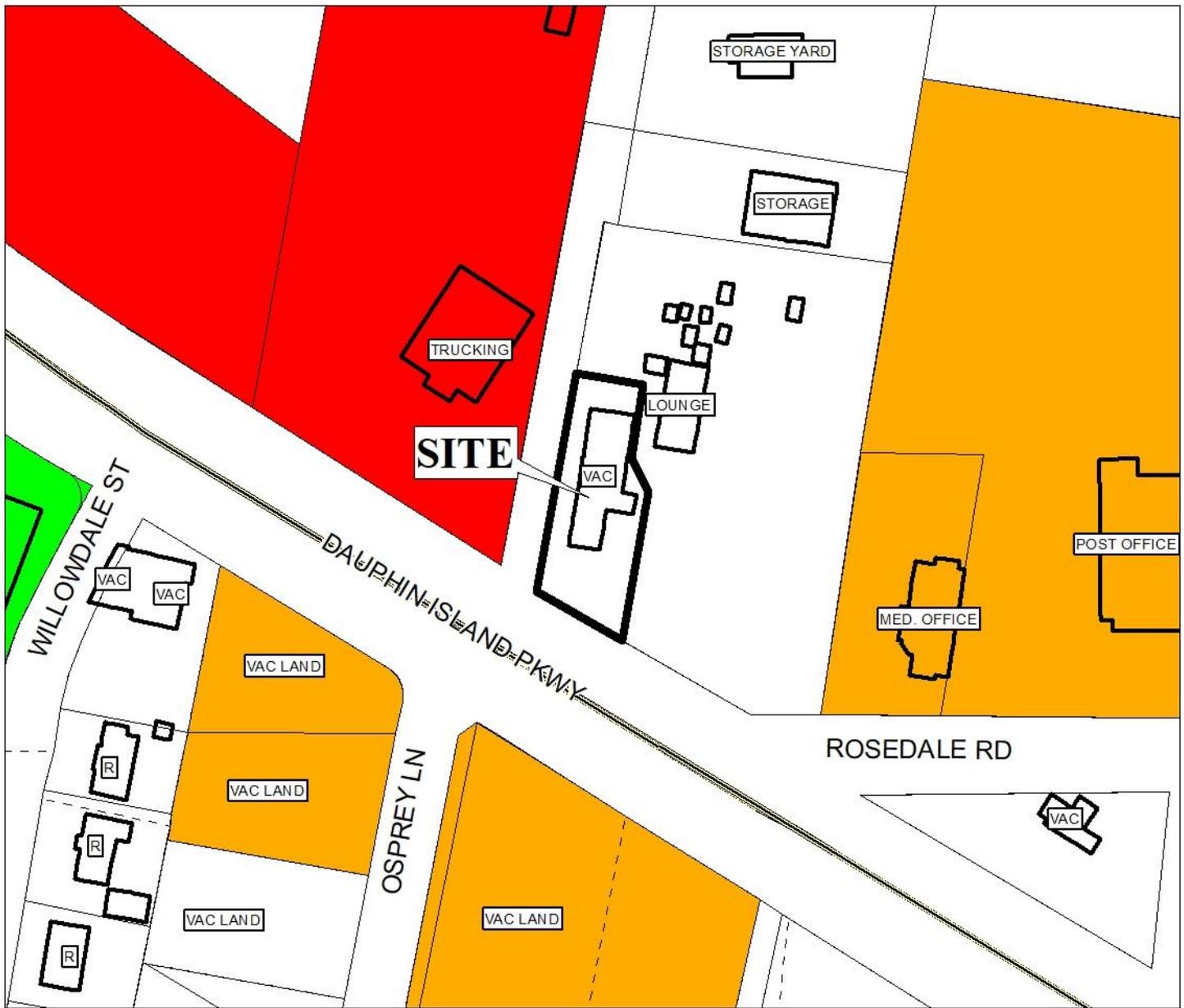
APPLICATION NUMBER 6364 DATE May 3, 2021

APPLICANT Henry Hamilton

REQUEST Use Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial units, vacant lands and residential units.

APPLICATION NUMBER 6364 DATE May 3, 2021

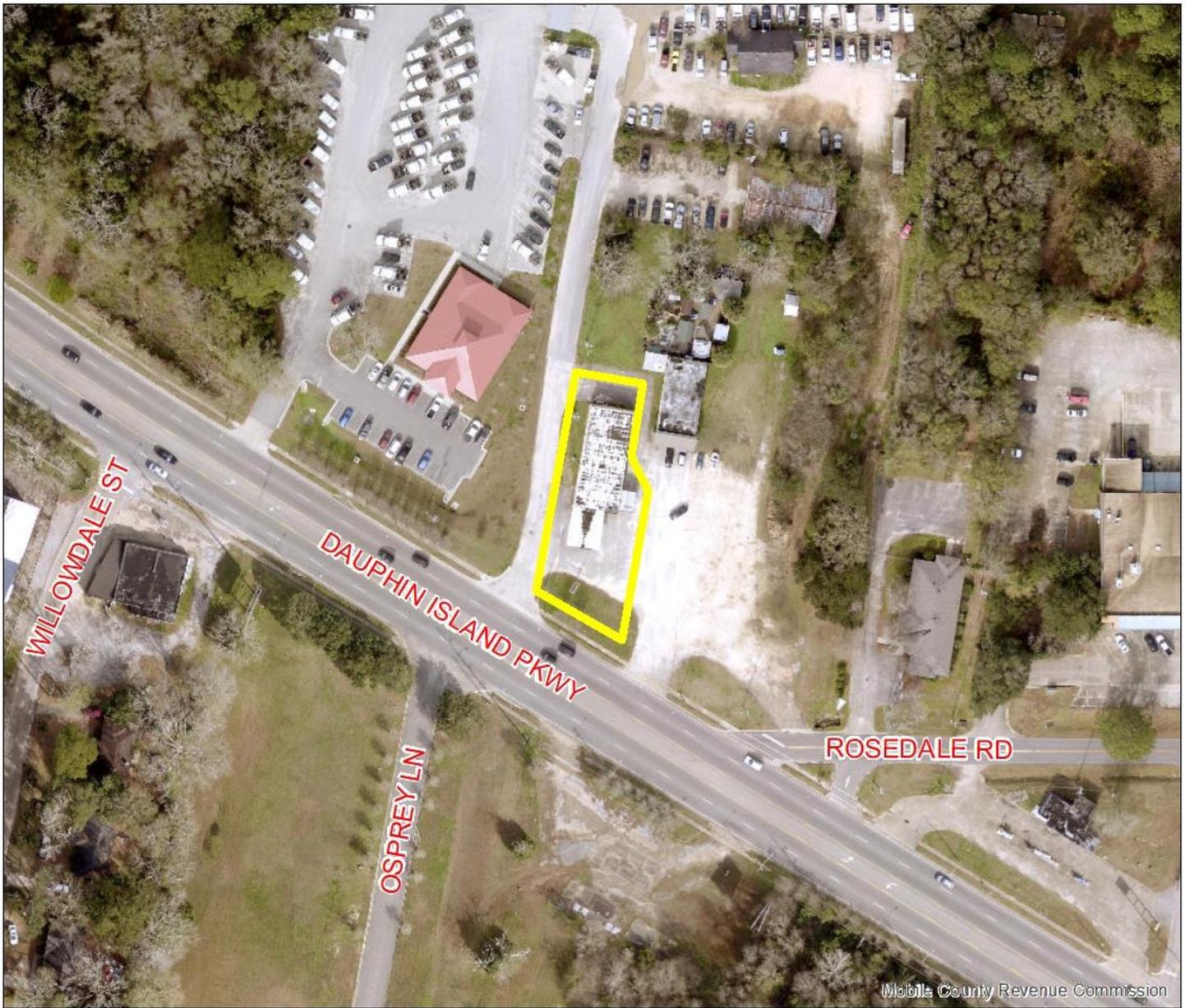
APPLICANT Henry Hamilton

REQUEST Use Variance

R-A	R-3	T-B	B-2	B-5	MUN	SD-WH	T5.1
R-1	R-B	B-1	B-3	I-1	OPEN	T3	T5.2
R-2	H-B	LB-2	B-4	I-2	SD	T4	T6



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL

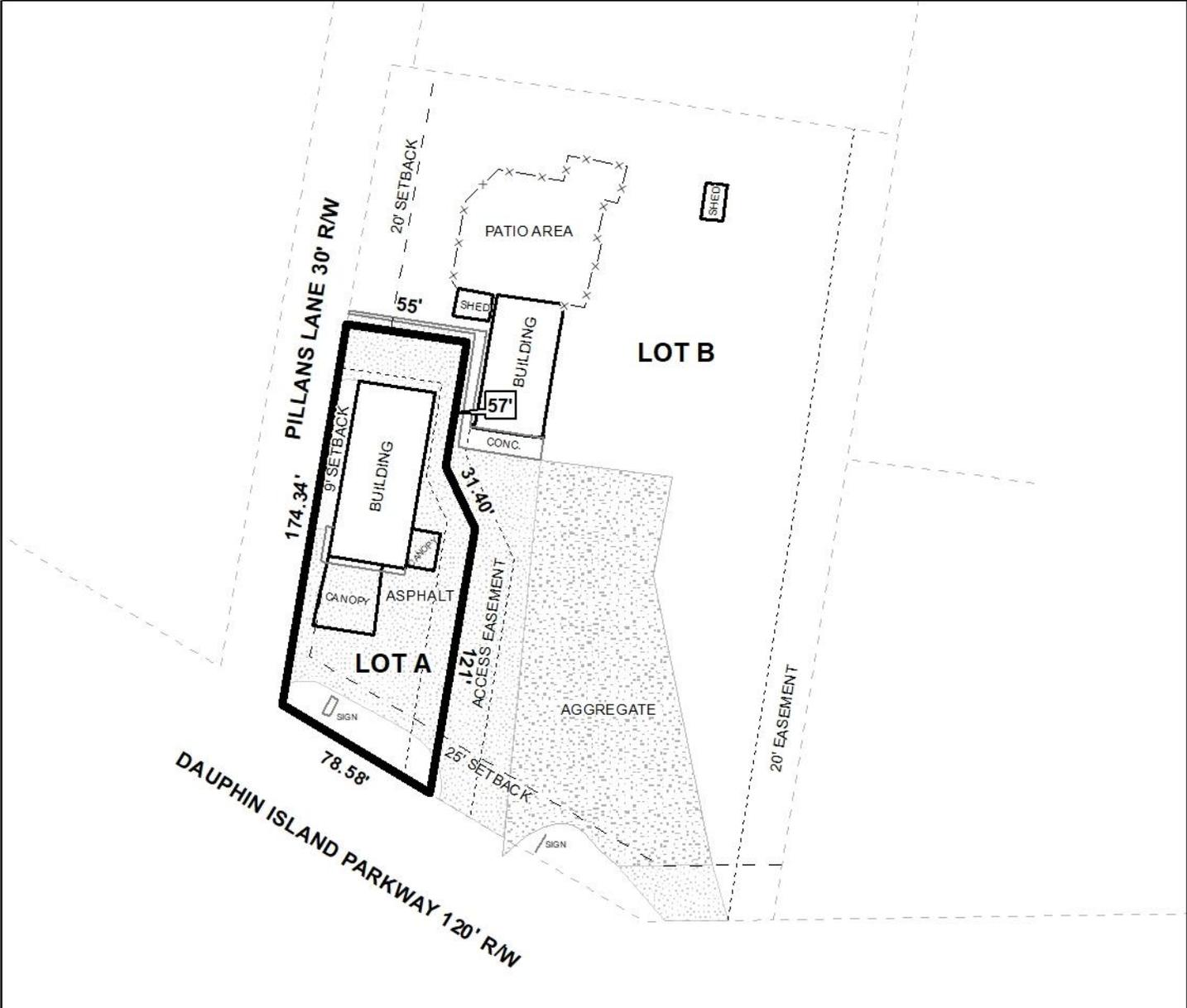


The site is surrounded by commercial units, vacant lands and residential units.

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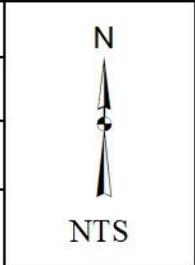


SITE PLAN

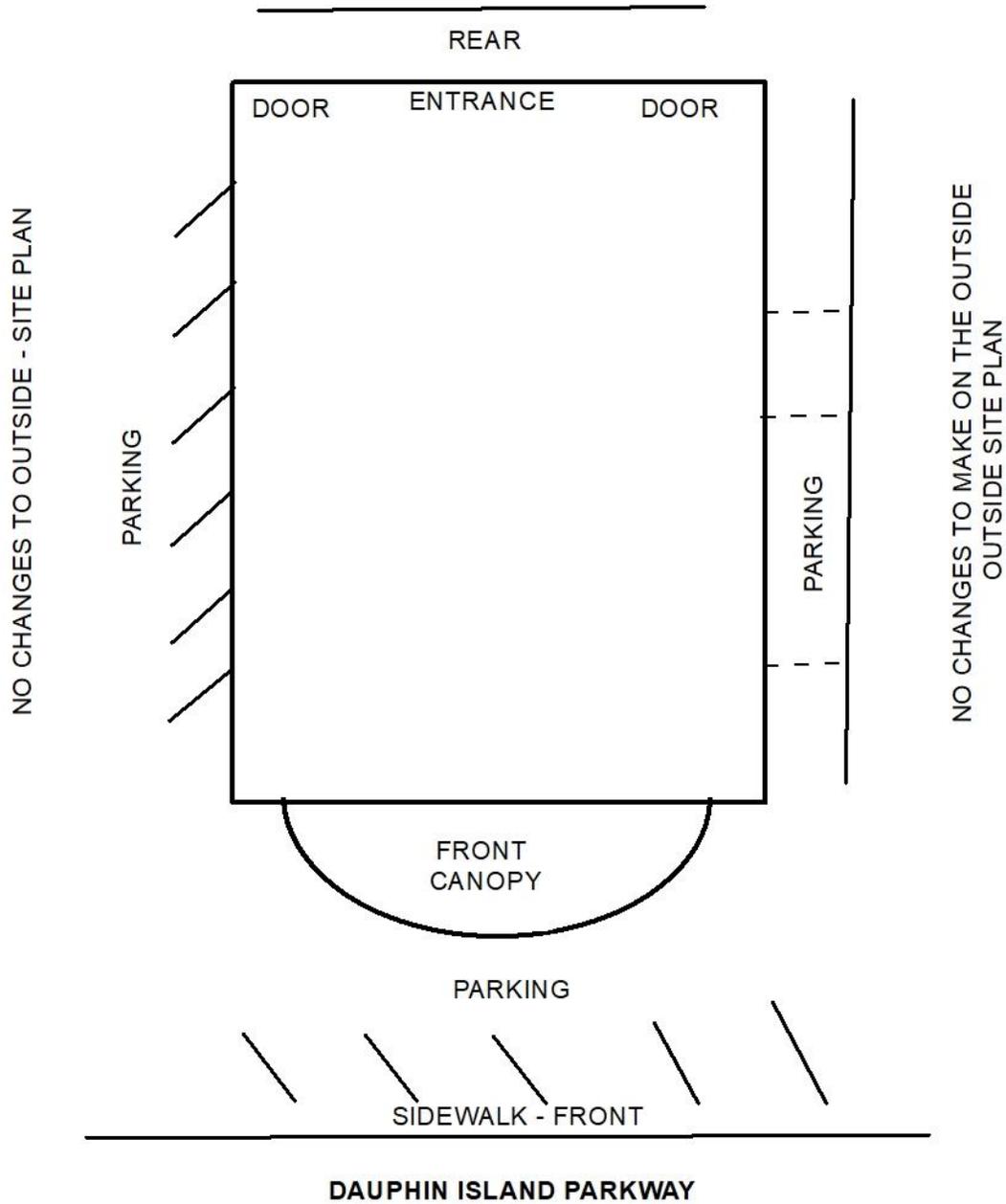


The site plan illustrates existing buildings, easements, setbacks and surfaces.

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DETAIL SITE PLAN



APPLICATION NUMBER 6364 DATE May 3, 2021
APPLICANT Henry Hamilton
REQUEST Use Variance



